

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

March 11, 2010

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Hawai'i

Consent to Extension of Lease Term, General Lease No. S-4475 K.K. Ranch, Inc.,  
Lessee, Parcels 7-A and 7-B, Government Land of Kalopa and Ka'ohē 3,  
Hamakua, Hawaii, Tax Map Key: 3<sup>rd</sup>/4-4-14:02, 03 & 11.

APPLICANT AND REQUEST:

Improvements financed by Lessee, K.K. Ranch, Inc. pursuant to Act 180, SLH 2002 in  
the amount of \$ 124,985.00.

In order for Lessee to amortize this expenditure, the Lessee is requesting an extension of  
General Lease No. S-4575 of 20 years, commencing on March 1, 2011 and expiring on  
February 28, 2031 for an aggregate term (initial term plus all extensions) of 55 years.

LEGAL REFERENCE:

Sections 171-22 and 36(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Parcels 7-A and 7-B, Government Land of Kalopa and  
Ka'ohē 3, Hamakua, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/4-4-14:03, 02 & 11, as  
shown on the attached map labeled Exhibit A.

AREA:

7,282 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Pasture purposes.

TERM OF LEASE:

35 years, commencing on March 1, 1976 and expiring on February 28, 2011.

Requested extension of 20 years commencing on March 1, 2011 and expiring on February 28, 2031.

ANNUAL RENTAL:

Current rent is \$21,233.00, due in semi-annual installments of \$10,616.50 on June 1 and December 1 of each year.

RENTAL REOPENINGS:

Reopenings in the original term were at the end of the 10<sup>th</sup>, 20<sup>th</sup> and 30<sup>th</sup> years of the term.  
The last rental reopening occurred on March 1, 2006.

Reopenings for the extended term shall be on March 11, 2010 (immediate reopening).  
With one additional reopening on March 1, 2021.

USE OF LOAN PROCEEDS:

A summary report of expenditures has been submitted by Lessee and is included as Exhibit B. Staff has reviewed the details of the report as well as the tax returns provided by Lessee as required in the conditions of Act 180, SLH 2002 and confirms the expenses incurred were applied to the lease property.

The Lessee has made substantial improvements to the perimeter fencing as well as interior paddock fencing.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>  </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal for the immediate rental reopening.

REMARKS:

General Lease No. S-4475 was sold at public auction on August 25, 1975 to Richard V. Toledo for a period of 35 years commencing March 1, 1976. The Board consented to the assignment of General Lease No. S-4475 from Richard V. Toledo, to K.K. Ranch, Inc. at its meeting of March 12, 1976.

At its meeting of December 14, 2001 (Item D-37) and November 15, 2002 (Item D-19), the Board, approved as amended, a 10-year term, non-exclusive easement to the State Department of Transportation in Connection with the Saddle Road Improvement Project for Palila Critical Habitat Mitigation Purposes. The issuance of the above easement restricts Lessee's grazing rights and use of approximately 2,123.629 acres of pasturelands leased under General Lease No. S-4475. The easement area is fenced and both domestic and feral ungulates, including cattle and sheep, were removed. Rent was re-determined and reduced in 2006 from \$28,375 to \$21,233 per year when the lease was amended and the Palila Critical Habitat Preservation Easement was put in place.

**As a condition to the above Board Action, the Board agreed in principle, to extend the terms of the lease in accordance with the provisions of Section 171-36(b), HRS, as amended, to assist in compensating the Lessee for the lands withdrawn. (Exhibit C)**

The Lessee is requesting an extension of lease so that the expenses incurred through the substantial improvements to the property can be amortized. In cooperation with the U.S. Department of Agriculture (USDA) and the Natural Resource Conservation Service (NRCS), the Lessee replaced the perimeter fence, improved and increased the paddock fencing within the lease area under the federal government's Environmental Quality Incentive Program (EQIP). The total cost for all improvements was \$198,905.00 with the Lessee contributing \$124,985.00.

The Lessee is compliant with the terms and conditions of the lease with regards to rent, insurance and performance bond. The Lessee submitted a conservation plan approved by the Chairperson on July 20, 2006.

The Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The last rental reopening occurred on March 1, 2006. There are no further rental reopenings. There are no outstanding rental reopening issues.

The property has been developed, utilized and maintained by the Lessee as a beef cattle operation, substantially for the purpose for which it was leased (pasture).

RECOMMENDATION:

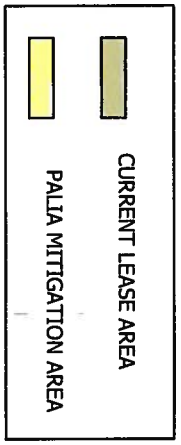
- I. Authorize the extension of General Lease No. S-4475 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

Respectfully Submitted,

  
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Gordon C. Heit  
Land Agent 

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson 



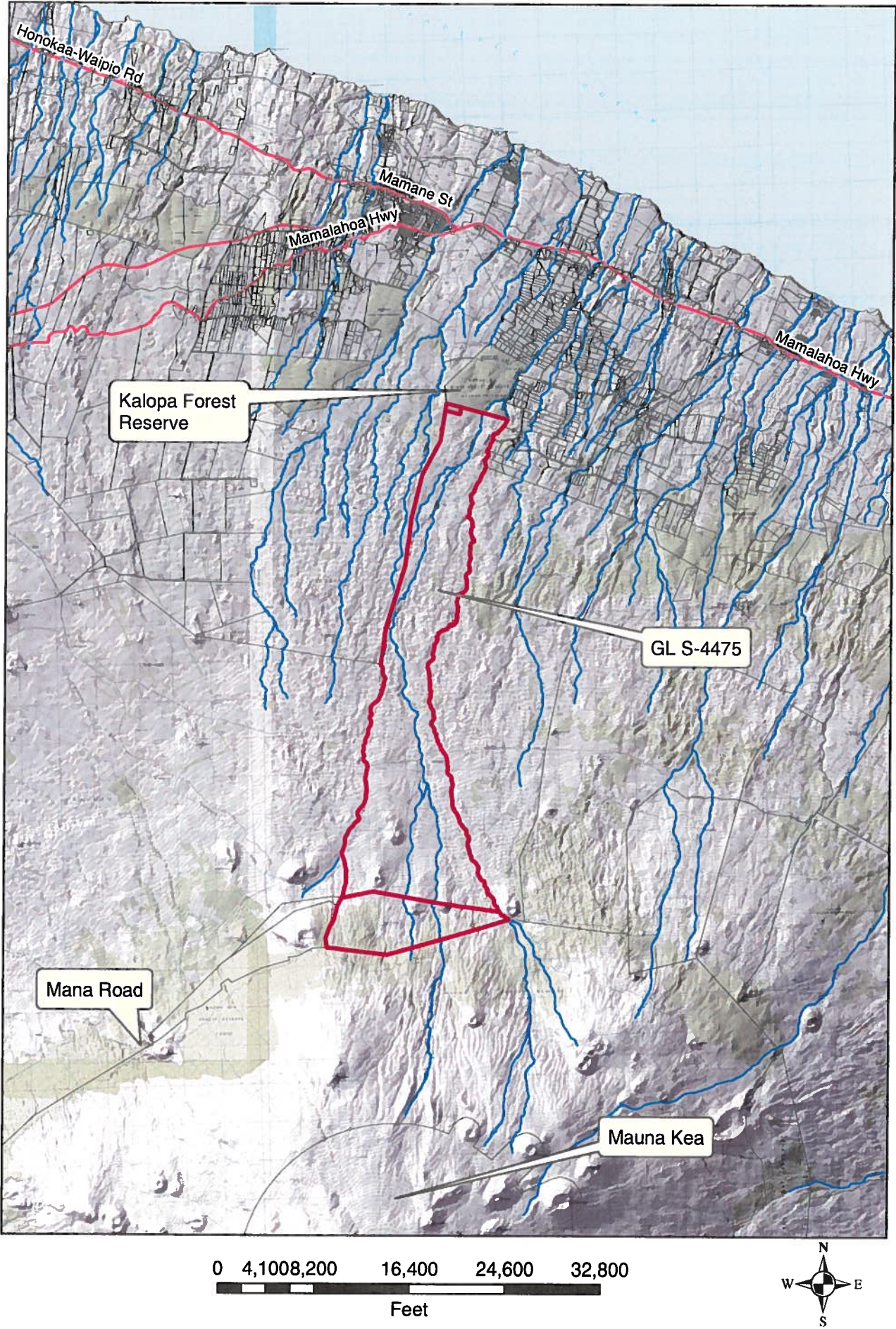
**Parcels Dropped: 8.**

THIRD		DIVISION	
ZONE	SEC.	PLAT	
4	4	14	
CONTAINING PARCELS			
SCALE: 1 in. = 5000 ft.			



# K.K. RANCH, INC.

# EXHIBIT A



# **K. K. RANCH, INC. Expense Sheet**

Fence Name	Elevation (ft)	Direction	Type	Length (ft)	Total cost (\$)	\$/ft. to Construct (\$)	Comments	NRCS life expectancy (yrs)	Construct dated
Mana road	5000	EW	5 strand barb	5300	\$26,500	\$5.00	No EQIP cost sharing for this fence	20	2007
Top of Bottle neck paddock	4500	EW	5 strand barb	4000	\$21,000	\$5.25	No EQIP cost sharing for this fence. Old fence runs parallel and is scheduled for removal.		
Top of Kapepe Mauka	4000	EW	5 strand barb	6213	\$31,432	\$5.06	EQIP cost sharing used for this fence. Old fence runs parallel and is scheduled for removal.	15-20	2008
Mauka-Makai	4200- 2700	N/S	5 strand barb	10088	\$60,117	\$5.96	EQIP cost sharing used for this fence. Divides Kapepe makai and Kapepe mauka paddocks in two each.	15-20	2009
1" water line	3900- 3000	N/S	1"	5500	\$6,977	\$1.27	Start of 1" water line	20	2008
Water troughs and tank			Galvanize 500 gallon water trough		\$10,909	\$1,818.17	Water trough installation and pad, Kapepe Mauka Waima	15	2009
Top of Kapepe makai	3000	EW	5 strand barb	5100	\$31,817	\$6.24	EQIP cost sharing used for this fence.	15-20	2008
2" water line	3000		2" water line	1000	\$10,153	\$10.15		20	2009
					\$198,905				



D-37

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division

December 14, 2001

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, HI 96813

PSF: 01HD-412

HAWAII

Grant of Term, Non-Exclusive Easement to the Department of Transportation, Highways Division in Connection with the Saddle Road Improvements Project for Palila Critical Habitat (PCH) Mitigation Purposes Affecting Portions of General Lease (GL) Nos. S-4471, S-4475, S-4477 and S-4478; Implement Act 236 SLH 2001 Mandates; and Issuance of Right-of-Entry for Management purposes; Kaohe 2<sup>nd</sup> and 3<sup>rd</sup> and Kalopa, Hamakua, North Hilo, Hawaii, Tax Map Keys: 4-3-10: Por. 2 and 6; 4-4-14: Por. 2 and 3; and 4-4-15: Por. 2

APPLICANT:

Department of Transportation (DOT), Highways Division in coordination with the Federal Highways Administration (FHWA).

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portions of the Government Land of Kaohe 2<sup>nd</sup> and 3<sup>rd</sup> and Kalopa, Hamakua, North Hilo, Hawaii, identified by Tax Map Key: 4-3-10: Por. 2 and 6; 4-4-14: Por. 2 and 3; and 4-4-15: Por. 2, as shown on the attached maps labeled Exhibit A.

AREA:

Tax Map Key-	Area (acres) Requested	Encumbrance
4-3-10: 2	2,228.384	GL 4478
4-3-10: 8	790.943	GL 4477
4-4-14: 2	1,202.000	GL 4475
4-4-14: 3	921.629	GL 4475
4-4-15: 2	1,399.335	GL 4471
Total Area Requested	6,542.291	

ZONING:

State Land Use District: Agricultural  
County of Hawaii CZO: Agricultural (A-40a)

*as amended*  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

12/14/2001

ITEM D-37

EXHIBIT C



**TRUST LAND STATUS:**

Section 5(a) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

**CURRENT USE STATUS:**

GL 4471 (TMK: 4-4-15: 2) to Parker Ranch for pasture purposes, expiring February 28, 2001.

GL 4475 (TMK: 4-4-14: Por. 2 and 3) to KK Ranch Inc. for pasture purposes, expiring February 28, 2011.

GL 4477 (TMK: 4-3-10: 8) to Schuman Carriage Company for pasture purposes, expiring February 28, 2011.

GL 4478 (TMK: 4-3-10: 2) to Boteilho Hawaii Enterprises for pasture purposes, expiring February 28, 2011.

**CHARACTER OF USE:**

The long-term restoration of a viable mamane (*Sophora chrysophylla*) forest that can support self-sustaining Palila populations as well as the expansion and/or re-introduction of Palila populations and control of Palila predators and alien species detrimental to the survival of the Palila.

**COMMENCEMENT DATE:**

Date of issuance.

**LEASE TERM:**

Ten (10) years

**CONSIDERATION:**

Fair market value, payable as a one-time payment, to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

**RENTAL REOPENINGS:**

Not applicable.

**CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:**

In compliance with the National Environmental Policy Act and Chapter 343, Hawaii Revised Statutes, as amended, the Final Environmental Impact Statement was submitted to the Office of Environmental Quality Control for publication of its Notice of Acceptance. The Record of Decision, summarizing all of the mitigation commitments for the Saddle Road Improvements Project, was approved on October 30, 1999.

The use of the subject lands for Palila mitigation purposes was identified in the Final Environmental Impact Statement.

**APPLICANT REQUIREMENTS:**

Applicant shall be required to:

1. Pay for an appraisal to determine the fair market value as a one-time payment.
2. Provide the Department of Land and Natural Resources (DLNR) with survey maps and descriptions for the easement area according to Department of Accounting and General Services, Survey Division standards at the Applicant's own cost.

**REMARKS:**

The Saddle Road Improvements Project involves the realignment and improvement of Saddle Road from Mamalahoa Highway (State Route 190) to Milepost 6, near the town of Hilo, a distance of approximately 48 miles.

The Saddle Road alignment that best meets its purpose impacts approximately 102.5 acres of federally designated Palila Critical Habitat (PCH) established pursuant to the US Endangered Species Act (ESA). The US Fish and Wildlife Service, which is responsible for the administration of the ESA, has determined that the construction of the improvements within the PCH will not jeopardize the Palila nor adversely modify the PCH, provided that conservation measures identified in the ROD and the Memorandum of Understanding (MOU) regarding implementation of the Saddle Road PCH mitigation, dated August 10, 1999 are implemented.

The MOU determined that the Palila Mitigation, as presented in the Saddle Road Biological Opinion (BO) for the selected alignment, is necessary and must be implemented to ensure the successful completion of the proposed project. The BO, as a condition of constructing the Saddle Road realignment within the PCH, required the following:

1. Provision of approximately 5,143 acres of land on the north slope of Mauna Kea for Palila habitat restoration.
2. Provision of approximately 1,400 acres of land immediately adjacent to the current Palila population on the West slope of Mauna Kea for Palila habitat restoration.
3. The management of these lands for the re-establishment/sustenance of Palila in accordance with the MOU.

Staff is recommending that the PCH Mitigation Lands easement overlay the subject pasture leases. The easement will impact the leases in that ungulates, including cattle and sheep, will not be permitted to graze within the easement area as part of the requirements of the MOU and BO. This will cause the displacement of the existing lessees from grazing these lands. However, uses not inconsistent with the primary goal of the Palila mitigation program will be allowed.

DOT, in coordination with FHWA will provide compensation to the existing lessees in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979, as amended. Under this Act, the tenants are eligible for reimbursement of actual reasonable expenses for vacation of the property under the relocation provisions, as well as any required payment for improvements to the property. Compensation for improvements would consist of payment for the permanent improvements (buildings, wells, new fences, etc.) made to the properties by the lessees in accordance with the lease.

In recognition of the potential impacts to the State's lessees, the 2001 Hawaii State Legislature enacted Act 236, which directs the Department of Land and Natural Resources to "expedite discussions with representatives from Parker Ranch, K.K. Ranch, Inc., S.C. Corporation, and Boteilho Ent., Inc. to identify and investigate all alternatives that will:

1. Fairly compensate the ranchers for losses suffered as a result of the withdrawal of any leased lands; and
2. Avoid providing exceptions to public land leasing policies.

The department shall also authorize the lessees to utilize ten percent of remaining land for alternative agriculture use at no increase in the lease rent rate."

In compliance with the Act, staff is recommending that the lease rents be reduced in proportion to the areas being affected by the PCH Mitigation Lands easement. In addition, staff is recommending that lease extensions, consistent with existing leasing policy, be considered for these leases, up to the maximum term of 55 years as provided in Chapter 171, Hawaii Revised Statutes, as amended. This would allow the lessees another 20 years to recoup the operations consequences of the reduced leased areas. The lease extensions should be considered up to the termination of the leases in 2011.

**RECOMMENDATION:** That the Board, subject to the Applicant requirements above

- A. Authorize the issuance of an easement covering the subject PCH Mitigation Lands for the purpose of the long term restoration of a viable mamane forest that can support self sustaining Palila populations as well as the expansion and/or re-introduction of Palila populations and control of Palila predators and alien species detrimental to the survival of the Palila, subject to any applicable terms and conditions cited above, which are by this reference incorporated herein, and subject further to the following:

1. All uses within the easement area shall be consistent with the purpose stated above. Any potential uses, including any use by the existing lessees, shall be evaluated and permitted only if the proposed use does not compromise the restoration of the mamane forest.
2. All management actions shall be consistent with the Palila mitigation goals as guided by the Biological Assessment of the Hawaii State Route 200-Mamalahoa Highway to Milepost 6 Saddle Road Realignment Project, Island of Hawaii, the Biological Opinion of the US Fish and Wildlife Service for the Saddle Road Improvements Project and the US Fish and Wildlife Service's Palila Recovery Plan and all updates thereto.

3. All management plans or actions recommended for the easement area shall be in accordance with DLNR rules and regulations.
  4. Hunting activities that do not compromise the restoration of the mamane forest may be may be allowed (under the authority of DLNR) within the easement area, provided that such activities are consistent with the terms and conditions of the existing leases.
  5. The easement area shall be fenced and both domestic and feral ungulates, including cattle and sheep, removed.
  6. Access to and use of the PCH Mitigation Lands by the existing lessees shall be consistent with its purpose and subject to approval by DOT or its assigns, which will not be unreasonably withheld.
- B. Pursuant to Act 236 SLH 2001, authorize a reduction in lease rental for GL 4471, 4475, 4477 and 4478 in proportion to the leased area being impacted by the easement. The reductions shall be a percent equal to the easement area divided by the total leased area.
- C. Pursuant to Act 236 SLH 2001, amend GL 4471, 4475, 4477 and 4478 by authorizing the lessees to utilize ten percent (10%) of their remaining leased premises for alternative agriculture use at no increase in the lease rent.
- D. Agree in principal to the extension of the terms of the above leases in accordance with the provisions of Section 171-36(b), Hawaii Revised Statutes, as amended and existing Board policies for such extensions.
- E. Authorize the issuance of an immediate right-of-entry to the Applicant to enter upon the easement area for management purposes, subject to the following:
1. Effective upon approval and shall expire one (1) year thereafter, unless extended by the Department.
  2. The Grantee shall observe and comply with all laws, ordinances, rules and regulations of the Federal, State and County governments relative to the use of the subject premises.
  3. Indemnity and hold harmless clause.
  4. Liability insurance coverage clause for agents, consultants and/or contractors of DOT, Highways Division.
  5. Non-discrimination clause.
  6. Hazardous waste clause.
  7. Archeological artifacts clause.

8. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,

*Gary Martin*

GARY MARTIN  
Land Agent

APPROVED FOR SUBMITTAL:

*Gilbert S. Coloma-Agaran*

GILBERT S. COLOMA-AGARAN, Chairperson





